

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

|                          |   |                     |
|--------------------------|---|---------------------|
| APPLETON PAPERS INC. and | ) |                     |
| NCR CORPORATION,         | ) |                     |
|                          | ) | No. 08-CV-00016-WCG |
| Plaintiffs,              | ) |                     |
|                          | ) |                     |
| v.                       | ) |                     |
|                          | ) |                     |
| GEORGE A. WHITING PAPER  | ) |                     |
| COMPANY, et al.,         | ) |                     |
|                          | ) |                     |
| Defendants.              | ) |                     |

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**MENASHA CORPORATION’S RESPONSE TO APPLETON PAPERS, INC.  
AND NCR CORPORATION’S PROPOSED FINDINGS OF FACT  
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT  
ON CERTAIN DEFENDANTS’ STATE COMMON LAW COUNTERCLAIMS**

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Pursuant to Civil L.R. 56(b)(2)(B), Defendant Menasha Corporation (“Menasha”) responds to the Plaintiffs’ [Proposed] Findings of Fact (Dkt. 945) as follows:

Proposed Findings of Fact 1 – 16:

Response: Proposed Findings of Fact 1 – 16 are not directed to Menasha and therefore do not require a response from Menasha.

Proposed Finding of Fact 17: Menasha has alleged that Plaintiffs are liable for creation of a public nuisance. Roach Decl., Ex. 8 [Defendant Menasha Corporation’s Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

Response: Admitted.

Proposed Finding of Fact 18: Menasha has alleged that Plaintiffs are liable for maintenance of a public nuisance. Roach Decl., Ex. 8 [Defendant Menasha Corporation’s Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

Response: Admitted.

Proposed Finding of Fact 19: Menasha has not pleaded a peculiar injury relating to its creation of a public nuisance counterclaim. Roach Decl., Ex. 8 [Defendant Menasha Corporation's Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

Response: Denied. Paragraph 39 of Menasha's Answer to Seventh Amended Complaint and Counterclaims states: "NCR and API are liable to Menasha in compensatory damages *as a result of the harm suffered by Menasha* due to these releases, and NCR and API must also abate the public nuisance." Dkt. 293, ¶ 39 at 33 (emphasis added). Menasha has plead a short and plain statement of the claim showing that Menasha is entitled to the relief sought and is sufficient for notice pleading. Fed. R. Civ. P. 8(a)(2). Only simple, concise and direct allegations are required. Fed. R. Civ. P. 8(d). No technical form is required. *Id.*

Proposed Finding of Fact 20: Menasha has not pleaded a peculiar injury relating to its maintenance of a public nuisance counterclaim. Roach Decl., Ex. 8 [Defendant Menasha Corporation's Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

Response: Denied. Paragraph 43 of Menasha's Answer to Seventh Amended Complaint and Counterclaims states: "NCR and API are liable to Menasha in compensatory damages *as a result of the harm suffered by Menasha* due to these releases, and NCR and API must also abate the public nuisance." Dkt. 293, ¶ 43 at 34 (emphasis added). Menasha has plead a short and plain statement of the claim showing that Menasha is entitled to the relief sought and is sufficient for notice pleading. Fed. R. Civ. P. 8(a)(2). Only simple, concise and direct allegations are required. Fed. R. Civ. P. 8(d). No technical form is required. *Id.*

Dated: August 2, 2012

**HUNSUCKER GOODSTEIN & NELSON PC**

By: /s/ Philip C. Hunsucker  
Attorneys for Defendant Menasha Corporation

Philip C. Hunsucker (CA State Bar 135860)  
David A. Rabbino (CA State Bar 182291)  
Allison E. McAdam (CA State Bar 226836)  
Marc A. Shapp (CA State Bar 266805 and PA State  
Bar 204305)

**HUNSUCKER GOODSTEIN & NELSON PC**

3717 Mt. Diablo Blvd., Suite 200

Lafayette, CA 94549

Ph: (925) 284-0840

Fax: (925) 284-0870

[phunsucker@hgnlaw.com](mailto:phunsucker@hgnlaw.com)

[drabbino@hgnlaw.com](mailto:drabbino@hgnlaw.com)

[amcadam@hgnlaw.com](mailto:amcadam@hgnlaw.com)

[mshapp@hgnlaw.com](mailto:mshapp@hgnlaw.com)

Anne E. Lynch (DC State Bar 976226 and VA State  
Bar 73430)

**HUNSUCKER GOODSTEIN & NELSON PC**

5335 Wisconsin Avenue, NW, Suite 360

Washington, DC 20015

Ph: (202) 895-5380

Fax: (202) 895-5390

[alynch@hgnlaw.com](mailto:alynch@hgnlaw.com)

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|                          | ) |                     |
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**CERTIFICATE OF SERVICE**

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I hereby certify that on August 2, 2012, I electronically filed the following document:

**MENASHA CORPORATION'S RESPONSE TO APPLETON PAPERS, INC.  
AND NCR CORPORATION'S PROPOSED FINDINGS OF FACT  
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT  
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with the Clerk of the Court using the Electronic Court Filing System and is available for viewing and downloading.

Dated: August 2, 2012

**HUNSUCKER GOODSTEIN & NELSON PC**

By: /s/ Philip C. Hunsucker  
Attorneys for Defendant  
Menasha Corporation  
Philip C. Hunsucker (CA State Bar 135860)

**HUNSUCKER GOODSTEIN & NELSON PC**  
3717 Mt. Diablo Blvd.  
Suite 200  
Lafayette, CA 94549  
Ph: (925) 284-0840  
Fax: (925) 284-0870  
[phunsucker@hgnlaw.com](mailto:phunsucker@hgnlaw.com)